

KEYWORD: Foreign Influence

DIGEST: Applicant is a naturalized United States citizen who was born in Sudan. Concerns were raised because his four siblings are citizens of and reside in Sudan and his wife is a citizen of Sudan residing in the United States. Concerns pertaining to his wife have been mitigated since she is a United States citizen residing in the United States. Concerns pertaining to his siblings have been mitigated since his contacts with his siblings are minimal and he has not traveled to Sudan since moving to the United States 16 years ago. Foreign influence concerns have been mitigated. Clearance is granted.

CASENO: 03-25726.h1

DATE: 04/20/2006

DATE: April 20, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No.03-25726

**DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a naturalized United States citizen who was born in Sudan. Concerns were raised because his four siblings are citizens of and reside in Sudan and his wife is a citizen of Sudan residing in the United States. Concerns pertaining to his wife have been mitigated since she is a United States citizen residing in the United States. Concerns pertaining to his siblings have been mitigated since his contacts with his siblings are minimal and he has not traveled to Sudan since moving to the United States 16 years ago. Foreign influence concerns have been mitigated. Clearance is granted.

**STATEMENT OF CASE**

On June 15, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, Foreign Influence.

In a sworn statement dated July 19, 2005, Applicant responded to the SOR allegations. He requested a decision without a hearing. Department Counsel submitted the government's file of relevant material (FORM) on September 20, 2005. The FORM was mailed to Applicant on December 8, 2005, and was received on December 14, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on December 29, 2005. The case was assigned to me on January 23, 2006.

**FINDINGS OF FACT**

Applicant admits to SOR allegation 1.a but denies SOR allegation 1.b. He is a 61-year-old linguist for a defense contractor. He submitted a security clearance application on October 23, 2003. [\(2\)](#)

Applicant was born in Sudan. [\(3\)](#) He immigrated to the United States in 1990. He became a United States citizen on September 28, 2000. His wife was also born in Sudan and became a United States citizen on September 28, 2000. [\(4\)](#) Applicant currently works overseas as a contractor. [\(5\)](#) Aside from his overseas work for a DoD contractor, he has lived in the United States continuously since moving to the United States. He has not traveled to Sudan since leaving 16 years ago. He did not travel to Sudan in 1998 when his mother passed away. [\(6\)](#)

Applicant has two sisters and two brothers who are citizens of and reside in Sudan. [\(7\)](#) None of his siblings are agents of a foreign power or employees of the Sudanese government. His two sisters are home-makers. One of his brothers owns a small automobile parts shop. The other operates a small ten bedroom hotel and cafeteria. None of his siblings are involved in politics or any activity that would attract the attention of the Sudanese government. He has limited contact with his siblings. He has contact with his siblings when serious occasions occur such as deaths or marriages. [\(8\)](#)

Applicant does not have any property or financial interests in Sudan. He owns property in the United States. [\(9\)](#) He attended college in the United States. He did not renew his Sudanese passport after moving to the United States. [\(10\)](#)

Since March 2003, Applicant has worked as an Arabic linguist for several Department of Defense agencies. [\(11\)](#) Since October 2003, he has been working as a contractor with the Army in a middle eastern country in support of the Iraq war effort. He has received numerous awards and commendations for his work. [\(12\)](#)

His current supervisor states he has proven to be one of the most trustworthy persons in the section. His work ethic has been nothing short of outstanding and exceptional. [\(13\)](#) An Army Captain provided a letter stating Applicant is a true professional whose character and personal integrity are beyond question. [\(14\)](#) A professor of African studies at a midwestern university has known Applicant for about 25 years. He worked in Sudan in the early 1980s and got to know Applicant and his family. He has remained in close contact with Applicant since he moved to the United States. The professor describes him as a person of high integrity who has no connections with Sudan that would threaten national security. [\(15\)](#)

Another professor from a northwestern community college also befriended Applicant and his family while teaching at a university in Sudan in the late 1970s. He states that Applicant has never returned to his home country since moving to the United States. He notes that his family is 'completely off the radar' of the Sudanese government and that Sudan's government lacks the ability to track citizens who have been granted asylum elsewhere. He states Applicant's principal [\(16\)](#)

contacts are in the United States and his relationship with his siblings who still reside in Sudan is casual.

Sudan is a military dictatorship with a long history of violence and a poor human rights record.<sup>(17)</sup> Sudan has been designated as a state sponsor of terrorism.<sup>(18)</sup> In 2003, Sudan deepened its cooperation with the US Government to investigate and apprehend extremists suspected of terrorist activities but areas of concern remain.<sup>(19)</sup> Westerners traveling to Sudan have been warned that there have been terrorist threats aimed at Western and U.S. interests.<sup>(20)</sup>

## POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."<sup>(21)</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

**Guideline B - Foreign Influence:** A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contact with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.<sup>(22)</sup>

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(23)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(24)</sup> An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. <sup>(25)</sup>

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. <sup>(26)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. <sup>(27)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." <sup>(28)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." <sup>(29)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. <sup>(30)</sup> It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Under the foreign influence concern, a potentially disqualifying condition is raised with respect to Applicant's four siblings since they are citizens of and reside in Sudan. As such, Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1: (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*) applies.

I conclude the Government has not established a prima facie case under foreign influence with respect to Applicant's wife. Applicant has provided his wife's Certificate of Naturalization. She became a United States citizen on September 28, 2000. I find for the Applicant with respect to ¶ 1.b of the SOR.

A foreign influence security concern remains with respect to Applicant's four siblings who are citizens of and reside in Sudan (SOR ¶ 1.a). The foreign influence concern can be mitigated. Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1: (*A determination that immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associates in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between the loyalty to the person(s) involved and the United States*) is a potential mitigating condition applicable to this case.

Based on the record evidence before me, I conclude Applicant has established that his two brothers and two sisters who

reside in Sudan are not agents of a foreign power. His two sisters are homemakers. One brother owns a small hotel and cafeteria. The other brother owns a small auto parts store.

Applicant also has the burden to meet the second prong of FI MC 1 which is whether his relatives living in Sudan would be in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to his relatives and the United States. In analyzing whether a foreign relative is in a position of vulnerability it is necessary to assess the nature of the foreign countries involved. Applicant's siblings are potentially vulnerable to duress or adverse influence since they live in Sudan, a state sponsor of terrorism and a country with a poor human rights record. As such, FI MC E2.A2.1.3.1 cannot be applied.

Applicant has had limited contact with his family members living in Sudan since moving to the United States 16 years ago. As such, FI MC E2.A2.1.3.3: (*Contact and correspondence with foreign citizens are casual and infrequent*) applies with respect to Applicant's siblings. It is noted that the Appeal Board has stated there is a rebuttable presumption that any contact with an immediate family member in a foreign country is not casual and infrequent. In this case, Applicant only has contact with his siblings who reside in Sudan when significant life events happen such as weddings or deaths. He has not returned to Sudan since he left over 16 years ago, even choosing not to travel to Sudan in 1998 to attend his mother's funeral. Applicant states he has nothing in common with his siblings. Two family friends (i.e. the college professors) have provided statements verifying Applicant's limited contact with his family members.

There is no doubt that a vulnerability remains as long as Applicant's siblings are citizens of and reside in Sudan. However, considering his limited contact with his siblings, his lack of travel to his home country, and the fact that all of his financial interests are in the United States, Applicant has mitigated the security concern under Foreign Influence. He has received accolades from his superiors for his superior work ethic and duty as a linguist working on several DoD contracts. His substantial ties to and preference for the United States as well as his limited contact with his siblings lead me to conclude he can be trusted to place his obligation to the United States government ahead of any sense of obligation to his siblings residing in Sudan.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, common sense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has mitigated the foreign influence security concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided for Applicant.

## **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Guideline B: FOR APPLICANT

Subparagraph 1.a. For Applicant

Subparagraph 1.b. For Applicant

## **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive

5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Item 4.

3. Item 1, question 1.

4. Item 3 at 6.

5. Item 5 at 5.

6. Item 3 at 4.

7. Item 3.

8. Item 3 at 4.

9. *Id.*

10. Item 3 at 5.

11. Item 3 at 5.

12. Item 3 at 36-45.

13. Item 3 at 36.

14. Response to FORM at 8.

15. *Id.* at 9.

16. *Id.* at 10.

17. Items 11 and 12.

18. Items 9, 10 and 12.

19. Item 9 at 8.

20. Item 7.

21. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

22. DODD 5220.6, ¶ E2.A2.1.1.

23. DODD 5220.6 ¶ E.2.2.1.

24. *Id.*

25. *Id.*

26. DODD 5220.6, ¶ E3.1.14.

27. DODD 5220.6 ¶ E3.1.15.

28. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

29. DODD 5220.6 ¶ E2.2.2.



30. Executive Order 10865 §7.